



**Western
Pacific
Regional
Fishery
Management
Council**

August 1, 2008

Mr. Alan Risenhoover
Office of Sustainable Fisheries
National Marine Fisheries Service
1315 East-West Highway, SSMC 3
Silver Spring, MD 20910

Dear Mr. Risenhoover:

The Western Pacific Fishery Management Council offers the following comments on NMFS' proposed rule for new agency procedures to comply with the National Environmental Policy Act (NEPA) for environmental review of fishery management actions.

General comments

The proposed environmental review procedures seem to be primarily a repackaging of existing procedures with little or no improvement in efficiency and no apparent enhancement in terms of melding timelines or reducing duplication.

Specific comments

- 1) The proposed rule would change the name from Environmental Impact Statement (EIS) to Integrated Fishery Environmental Management Statement (IFEMS), with little improvement in the application of NEPA in the MSA fishery management process.
- 2) The proposed procedures call for a two meeting Council decision process along with a 45 day public comment period on an IFEMS prior to Council final action; however, the proposed procedures indicate that NMFS must still go through its 95 day Secretarial review process (after the Council's second meeting and with additional public review) for approval, partial approval, or disapproval of fishery management actions initiated by the regional fishery management councils (FMCs). We believe this is the current process and therefore not an improvement (in terms of efficiency) to the existing procedures regarding timelines for NEPA and Secretarial review of Council actions. Furthermore, page 22 of the preamble states "...*this proposed change would allow NMFS to start the clock on the comment period on the proposed fishery management measure or action. Allowing the clocks for the two sets of comment periods to begin and run simultaneously...*" However, section 700.203 of the proposed rules states that "...*the final IFEMS must address all public comments and modifications that occurred through the council process and must be submitted with the recommended management measure or action to begin Secretarial review.*" In this case, the preamble and the draft regulations appear to be inconsistent.

3) § 700.3 d(3) *Determine the necessary steps for NEPA compliance.*

It seems odd that the definition of an IFEMS includes the determination of the necessary steps for NEPA compliance. Shouldn't the steps be already determined when developing an IFEMS, i.e. EA vs IFEMS?

4) § 700.104b *NMFS determines through a Framework Compliance Evaluation that the management measures in the action and their environmental effects fall within the scope of a prior analysis.*

There is no mention of the Council's or Council staff's role in the "evaluation." Council staff at the least should be involved in determining what NEPA is appropriate, especially when they are going to have to do the bulk of the work under the proposed procedures.

5) § 700.108a(1) *If scoping is conducted as part of an FMC meeting, a scoping notice must, at a minimum, be included as a component of the appropriate FMC's next meeting agenda (MSA section 302(i)(2)(C)) and must be titled and formatted in a manner that provides the public with adequate notice of the NEPA-related scoping process.*

This is an example of NMFS interpreting NEPA as the driving force in public participation, which is not true under the MSA. It could be argued that the entire Council public participation process satisfies NEPA scoping. Identifying what is to be NEPA scoped compared to the Council process is not well defined in the proposed rule and will likely create confusing and disjointed Council meeting FR notices and Council meetings. In other words, the Council will have to take a break from normal business and conduct a scoping session which could disrupt the flow and timing of Council meetings.

6) § 700.108b(1) *NMFS, working with the appropriate FMC, shall ensure that affected Federal, State, and local agencies, any affected Indian tribe, the proponents of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds) are invited to participate.*

We find this language strange and inappropriate. For example, there is no explanation why it is necessary to identify "proponents of the action" as well as environmental groups to solicit their participation. Public notices in local newspapers and media outlets as well as the FR should provide sufficient notice to the public. We find this language to be divisive and unnecessary.

7) § 700.108 b(4) *NMFS and the appropriate FMC shall allocate assignments, with NMFS retaining responsibility for the final environmental document.*

It has been our experience that NMFS document ownership has lead to significant and unnecessary delays from lengthy reviews without substantive improvements in the information or analysis. Also, it is unclear what this provision is in talking about, i.e. what is the "final environmental document?" Is that the document the Council transmits to the NMFS?

8) § 700.108 b(6) *NMFS and the appropriate FMC shall identify other environmental review and consultation requirements in order to integrate them with the environmental document as provided in § 700.223.*

Does this mean ESA BiOps are to be included in a DIFEMS? In our region, NMFS has told us that and consultation cannot start until the Council has taken final action. Under the new procedures, Council final action does not come until after the DIFEMS is out and reviewed by public. This paragraph needs further clarification.

9) §§ 700.09, 700.12

We support having accurate time limits that are agreed to by NMFS and Council; however, it is unclear if MOU's (§700.12) have to be agreed to for each action requiring IFEMS. We could envision several MOU's existing at once with different levels of agreement which would be problematic.

10) §§ 700.202, 700.212 *The range of alternatives discussed in an IFEMS shall encompass those to be considered by the Secretary.*

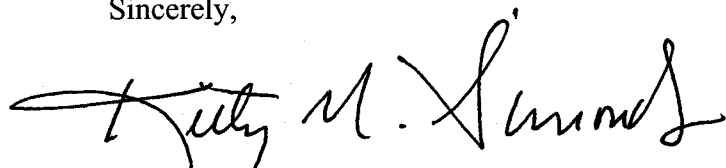
We support this "narrowing" of a reasonable range of alternatives and support language in §700.202(b) that says alternatives are those determined by the purpose and need; however, in §700.212(b) it is stated that the IFEMS will include reasonable alternatives not within the jurisdiction of the lead agency. These paragraphs seem to be in contradiction of each other and require further clarification on reasonable range of alternatives.

11) § 700.203(6)(i)(c) *Fishery management actions developed by NMFS. For FMPs, FMP amendments, and regulations developed by the Secretary pursuant to MSA sections 304(c), (e), and (g)(including HMS), and 305(d) the draft IFEMS shall be circulated for public comment in accordance with § 700.604(b).*

Why isn't there a similar two review process for Secretarial actions such as what is required for Council initiated actions?

Thank you for your attention to our comments. We hope NMFS considers the impact these proposed procedures will have on staffs of the fishery management Councils. Given the increased responsibility on staff for document preparation in shorter timeframes, I would expect that the fishery management Councils will be allocated increased funding to build up staff capacity to develop these environmental documents in a timely manner.

Sincerely,

A handwritten signature in black ink, appearing to read "Kitty M. Simonds". The signature is fluid and cursive, with a large, stylized "K" and "S".

Kitty M. Simonds
Executive Director